

§91.44

(2) Prior to the end of that 60-day period, an agreement is reached; *or*

(3) Prior to the end of that 60-day period, the mediator determines that an agreement cannot be reached.

This 60-day period may be extended by the mediator, with the concurrence of HHS, for not more than 30 days if the mediator determines that agreement will likely be reached during such extended period.

(f) The mediator shall return unresolved complaints to HHS.

§91.44 Investigation.

(a) *Informal investigation.* (1) HHS will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial investigation HHS will use informal fact finding methods, including joint or separate discussions with the complainant and recipient, to establish the fact and, if possible, settle the complaint on terms that are mutually agreeable to the parties. HHS may seek the assistance of any involved State agency.

(3) HHS will put any agreement in writing and have it signed by the parties and an authorized official at HHS.

(4) The settlement shall not affect the operation of any other enforcement effort of HHS, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation.* If HHS cannot resolve the complaint through informal investigation, it will begin to develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations HHS will attempt to obtain voluntary compliance. If HHS cannot obtain voluntary compliance it will begin enforcement as described in §91.46.

[47 FR 57858, Dec. 28, 1982, as amended at 70 FR 24322, May 9, 2005]

§91.45 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

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(a) Attempts to assert a right protected by the Act or these regulations; *or*

(b) Cooperates in any mediation, investigation, hearing, or other part of HHS' investigation, conciliation, and enforcement process.

§91.46 Compliance procedure.

(a) HHS may enforce the Act and these regulations through:

(1) Termination of a recipient's Federal financial assistance from HHS under the program or activity involved where the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) HHS will limit any termination under §91.46(a)(1) to the particular recipient and particular program or activity or part of such program or activity HHS finds in violation of these regulations. HHS will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from HHS.

(c) HHS will take no action under paragraph (a) until:

(1) The Secretary has advised the recipient of its failure to comply with the Act and these regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the Secretary has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the program or activity involved. The Secretary will file a report whenever any action is taken under paragraph (a).